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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MITRE SPORTS INTERNATIONAL LIMITED, :
: .
Plaintiff, : Case No.: 08 CIV 9117(GBD)
: .
-against- : .
: .
HOME BOX OFFICE, INC., : .
: .
Defendant. : .
: .
-----X

DECLARATION OF KATHERINE M. BOLGER

I, KATHERINE M. BOLGER, declare as follows:

1. I am an attorney duly admitted to this Court and am a partner at the law firm of Hogan & Hartson LLP, counsel for Defendant Home Box Office, Inc. ("HBO"). I submit this

declaration in support of HBO's motion for partial summary judgment.

2. On October 23, 2008, Plaintiff Mitre Sports International Limited ("Mitre" or "Plaintiff") filed the Complaint in this action and served it on HBO on October 29, 2008. A true and correct copy of the Complaint is annexed hereto as Exhibit ("Ex.") A.

3. On December 24, 2008, HBO filed and served its Answer to the Complaint. A true and correct copy of the Answer is annexed hereto as Ex. B.

4. On September 16, 2008, HBO telecast an episode of the program “Real Sports with Bryant Gumbel” that included a segment entitled “Children of Industry” (the “Segment”). A true and correct copy of the episode containing the Segment is annexed hereto as Ex. C.

5. On June 1, 2009, we wrote to Your Honor and requested permission for HBO to file motion for partial summary judgment. A true and correct copy of that letter is annexed hereto as Ex. D.

6. At the June 2, 2009 conference before this Court, Lloyd Constantine, counsel for Mitre, consented to the filing of HBO’s motion. A true and correct copy of the transcript of the June 2, 2009 Conference is annexed hereto as Ex. E.

7. A true and correct copy of the transcript of the March 17, 2009 court conference in this matter is annexed hereto as Ex. F.

8. Mitre stated in discovery in this action that Mayor & Co. is still manufacturing Mire balls and that the Sports Goods Foundation of India was responsible for obtaining the exhibits that Mitre annexed to the Complaint that purport to contain interviews with the children that appear in the Segment and with the children’s guardians.

9. On August 14, 2009, Rachel Strom, an associate under my supervision and direction, searched the LexisNexis database “Mega News, All” with the search terms “mitre w/8 soccer or sports or football and not ‘sergio mitre’ or ‘s.mitre’ or ‘Mitre 10’ or Mitre Corp’,” which was designed to obtain articles with the term “Mitre” within eight words as the terms “sports” or “football” or “soccer” but to exclude any articles that contained the terms “Sergio Mitre” “S.Mitre” “Mitre 10” or “Mitre Corp.” (Sergio Mitre is currently a pitcher for the New York Yankees.) LexisNexis reported 1395 hits.

10. On August 14, 2009, Ms. Strom searched the LexisNexis database “Mega News,

USNews" with the search terms "mitre w/8 soccer or sports or football and not 'sergio mitre' or 's.mitre' or 'Mitre 10' or Mitre Corp'," which was designed to obtain articles with the term "Mitre" within eight words as the terms "sports" or "football" or "soccer" but to exclude any articles that contained the terms "Sergio Mitre" "S.Mitre" "Mitre 10" or "Mitre Corp." LexisNexis reported 415 hits.

11. On August 27, 2009, Ms. Strom searched the Westlaw database "AllNews" with the search terms "MITRE /S SPORTS FOOTBALL SOCCER % 'SERGIO MITRE' 'S. MITRE' 'RADIO MITRE' 'MITRE 10' 'MITRE CORP'," which was designed to obtain articles with the term "Mitre" in the same sentence as the terms "sports" or "football" or "soccer" but to exclude any articles that contained the terms "Sergio Mitre" "S.Mitre" "Mitre 10" or "Mitre Corp." Westlaw reported 888 hits.

12. On August 27, 2009, Ms. Strom searched the Westlaw database "USNews" with the search terms "MITRE /S SPORTS FOOTBALL SOCCER % 'SERGIO MITRE' 'S. MITRE' 'RADIO MITRE' 'MITRE 10' 'MITRE CORP'," which was designed to obtain articles with the term "Mitre" in the same sentence as the terms "sports" or "football" or "soccer" but to exclude any articles that contained the terms "Sergio Mitre" "S.Mitre" "Mitre 10" or "Mitre Corp." Westlaw reported 332 hits.

13. Ms. Strom also conducted a search of the Internet using the search engine <http://www.google.com> ("Google") for the terms "Mitre Soccer -Sergio", which was designed to obtain hits with the terms "Mitre" and "Soccer" but not any hits that were about Sergio Mitre. Google reported that it had 2,970,000 hits for those terms on the Internet.

14. Ms. Strom searched Google "images" for the search terms "Mitre Soccer -Sergio", which was designed to obtain hits with the terms "Mitre" and "soccer," but not any hits that were

about Sergio Mitre. Google reported that it had 41,900 relevant images.

15. Ms. Strom also searched Google “videos” for the terms “Mitre Soccer - Sergio”, which was designed to obtain hits with the terms “Mitre” and “soccer,” but not any hits that were about Sergio Mitre. Google reported that it had 72 relevant videos.

16. On August 27, 2009, Ms. Strom performed a search of the terms “Mitre” and “Soccer” on the popular video-sharing website www.Youtube.com. The search reported 63 different results for those terms. The first hit of the search, available at <http://www.youtube.com/watch?v=LbmRN7OvPac>, is a commercial for Mitre soccer equipment. The commercial proclaims that Mitre is “America’s #1 Soccer Shoe.” A true and correct copy of the first webpage of the Youtube search results is attached hereto as Ex. G. Also attached hereto as Ex. G is a true and correct copy of the Youtube webpage featuring the Mitre soccer commercial.

17. A true and correct copy of the U.S.A. country information and FIFA’s Member Associations sections of the Fédération Internationale de Football Association (FIFA) website, available at www.fifa.com, are annexed hereto as Ex. H.

18. Mitre has been the subject of extensive press coverage. A true and correct copy of 111 of those articles, all of which are cited in the Memorandum Of Law Of Defendant Home Box Office, Inc. In Support Of Its Motion For Partial Summary Judgment (the “Memo of Law”) are annexed hereto as Ex. I-1 through I-111.

19. True and correct copies of articles from the *Los Angeles Times*, which were published on June 29 and June 30, 2009 and which are discussed in the Memo of Law, are annexed hereto as Ex. J.

20. A true and correct copy of a section from the CNN Money website that is entitled

“Man who? UK team has big US prospects”, available at www.cnnmoney.com, is annexed hereto as Ex. K.

21. A true and correct copy of the a section from website www.imbd.com that is mentioned in the Memo of Law is annexed hereto as Ex. L.

22. A true and correct copy of a section from the EPL Talk website that is entitled “ESPN Garners Highest TV Ratings for EPL in US History”, available at www.epltalk.com, is annexed hereto as Ex. M.

23. On August 27, 2009, Ms. Strom obtained from the Internet website <http://walmart.com> a copy of the webpage that lists forty-six different Mitre products that customers can purchase online or in Wal-Mart retail stores in the United States. These items include Mitre soccer balls, Mitre soccer goals and various Mitre sportswear. A true and correct copy of this webpage is annexed hereto as Ex. N.

24. Also on August 27, 2009, Ms. Strom obtained from the Internet website <http://www.amazon.com> a copy of the webpage where individuals can purchase Mitre products and read product reviews written by other customers. Available for purchase, on Amazon.com are four different models of Mitre soccer balls, as well as Mitre soccer cleats. A true and correct copy of this webpage is annexed hereto as Ex. O.

25. Also on August 27, 2009, Ms. Strom obtained from the Internet website <http://www.ebay.com/> a copy of the webpage that lists forty-six different auctions for Mitre products that customers can purchase online. Available for purchase, on ebay.com are various models of Mitre soccer balls, as well as Mitre soccer shoes, cleats and shin guards. A true and correct copy of this webpage is annexed hereto as Ex. P.

26. Also on August 27, 2009, Ms. Strom obtained from the Internet website

<http://www.pittsburghsoccer.com/> a copy of the webpage where individuals can purchase a Mitre soccer ball. A true and correct copy of this webpage is annexed hereto as Ex. Q.

27. On June 6, 2009, Anna Kadyshevich, a summer law clerk from my office, acting under my supervision and control, went to Modell's Sporting Goods, located at 51 East 42nd Street, New York, New York. There, available for purchase were Mitre soccer balls, Mitre soccer shoes, and Mitre soccer accessories. True and correct copies of photographs taken by Ms. Kadyshevich of these in-store items are annexed hereto as Ex. R.

28. Also on June 6, 2009, Ms. Kadyshevich went to a Kmart department store, located at 770 Broadway, New York, New York. For sale were Mitre soccer balls and other Mitre sports equipment. True and correct copies of photographs taken by Ms. Kadyshevich of these in-store items are annexed hereto as Ex. S.

29. True and correct copies of several pages of Mitre's website, www.mitre.com, that are cited in the Memo of Law are attached hereto as Ex. T.

30. True and correct copies of several pages of the Mitre South Africa website, <http://mitre.co.za/>, that are cited in the Memo of Law are attached hereto as Ex. U.

31. A true and correct copy of a document entitled "Mitre Making a Difference: Mitre's Ethical Responsibilities," which is available at <http://www.mitre.com/static/html/documents/Mitre%20Making%20a%20Difference.pdf>, is annexed hereto as Ex. V.

32. A true and correct copy of a document entitled "Mitre's Ethical Responsibilities," which is available at <http://www.mitre.com/static/html/documents/Mitre%20Ethical%20Responsibilities,%20Conduct,%20Employees,%20Suppliers,%20Environment.pdf>, is annexed hereto as Ex. W.

33. A true and correct copy of the report entitled “A Sporting Chance: Tackling Child Labour in India’s Sports Goods Industry”, written by Martin Cottingham and published by Christian Aid, an English non-profit organization, in May, 1997 is annexed hereto as Ex. X.

34. A true and correct copy of a report entitled “By The Sweat & Toil of Children.”, published by the United States Department of Labor in June 1997 is annexed hereto as Ex. Y.

35. A true and correct copy of a report entitled “Sialkot, Pakistan: The football industry From Child Labour to Worker’s Rights” published by the Clean Clothes Campaign in November 1999 is annexed hereto as Ex. Z.

36. A true and correct copy of a report entitled “The Dark Side of Football: Child and Adult Labor In India’s Football Industry and the role of FIFA,” published by the India Committee of the Netherlands in 2000 is annexed hereto as Ex. AA.

37. A true and correct copy of a report entitled “The State of the World’s Children 1997,” written by Carol Bellamy and published by the United Nations Children’s Fund (UNICEF) in 1997, is annexed hereto as Ex. BB.

38. A true and correct copy of documents produced by Mitre in this litigation, which are production numbered MIT00026359-26362, are annexed hereto as Ex. CC.

39. A true and correct copy of documents produced by Mitre in this litigation, which are production numbered MIT00030210-30211, are annexed hereto as Ex. DD.

40. A true and correct copy of documents produced by Mitre in this litigation, which are production numbered MIT00096963-96965, are annexed hereto as Ex. EE.

41. A true and correct copy of a document produced by Mitre in this litigation, which is production numbered MIT00024830, is annexed hereto as Ex. FF.

42. A true and correct copy of documents produced by Mitre in this litigation, which

are production numbered MIT00096966-96967, are annexed hereto as Ex. GG.

43. A true and correct copy of documents produced by Mitre in this litigation, which are production numbered MIT00151691-151694, are annexed hereto as Ex. HH.

44. A true and correct copy of a document produced by Mitre in this litigation, which is production numbered MIT0031106-31107, is annexed hereto as Ex. II.

45. A true and correct copy of a document produced by Mitre in this litigation, which is production numbered MIT00028306, is annexed hereto as Ex. JJ.

46. A true and correct copy of documents produced by HBO in this litigation, which are production numbered HBO005942-5994, are annexed hereto as Ex. KK.

47. A true and correct copy of a document produced by HBO in this litigation, which is production numbered HBO001926-1927, is annexed hereto as Ex. LL.

I declare under penalty of perjury under the laws of the United States of America and the State of New York that the foregoing is true and correct and that this declaration was executed on August 28, 2009.

/s/ Katherine M. Bolger
KATHERINE M. BOLGER